Samantha Katz

From: Benjamin Levites <blevites@coughlinbetke.com>
Sent: Monday, March 15, 2021 9:36 AM
To: CTDml_SALM_Discovery
Cc: Frank McCoy; Kate Salvaggio; Taylor DePascale; Kevin O'Leary
Subject: 3:20-cv-01657-KAD D'Agostin v. Fitness International, LLC: Report of the Parties
Attachments: image001.png; image002.png

CAUTION - EXTERNAL:

Judge Merriam:

Pursuant to the Court's Order dated March 8, 2021, Doc. 29, the parties hereby inform the Court that they were unable to reach an agreement concerning the scope of the 30(b)(6) deposition topics and documents to be produced by the deponent.

Plaintiff's position: The Plaintiff would agree to limit his requests to CT,NY,NJ and PA. All requests would be limited to accidents "involving falls on water or substances on tile floors" for 5 years leading up to the date of accident. This would involve approximately 102 clubs out of the approximately 750 clubs. The plaintiff's theory is that tiled areas that are exposed to water (i.e. showers, pools, saunas) should be tiled with skid resistant tile and/or appropriate matting.

Defendant's position: The Defendant, Fitness International, proposed to limit the scope of the 30(b)(6) deposition topics and documents to be produced by the deponent, as an initial matter, by limiting the inquiry to three years of slips-and-falls in the shower areas at LA Fitness facilities in the State of Connecticut constructed within three years of the Norwalk facility.

This limitation would permit the Plaintiff to establish whether similar facilities used mats, and whether that use prevented slips-and-falls like that alleged by the Plaintiff. Specifically, this discovery would disclose one of the following:

First, that certain facilities used mats and prevented slips-and-falls, while others did not use mats and slips-and-falls had occurred. The plaintiff could demonstrate notice as argued to the Court, and no further inquiry would be required.

Second, that all facilities used mats with the exception of the Norwalk facility, and those mats prevented slips-and-falls. The plaintiff could demonstrate notice as argued to the Court, and no further inquiry would be required.

Third, that no facilities used mats, and there were slips and falls at all the facilities. The plaintiff could demonstrate notice as argued to the Court, and no further inquiry would be required.

Fourth, there were no slips and falls at any facilities, irrespective of whether they had mats or not. The plaintiff could not demonstrate notice, and no further inquiry would be required.

Fifth, that certain facilities had mats and certain facilities did not have mats, but there were slips-and-falls at both. This could be ambiguous and therefore justify further inquiry by expanding the sample size.

This proposed limitation would capture "accidents are similar enough that discovery concerning those incidents is relevant to the circumstances of the instant case." McAnneny v. Smith & Nephew, Inc., 2018 U.S. Dist. LEXIS 47927, at *9 (D. Conn. Mar. 19, 2018). It is accordingly proportionate to the needs of this slip-and-fall case in a men's locker room shower.

Kind regards,
Ben

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